In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 7486 of 2006

Date of Decision: 5.3.2007

Ex-Head Constable Sukhchain Singh

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. TP Singh, Advocate
for the petitioner.

Mr. B.S. Chahal, AAG, Punjab
for the respondents.

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J.S. Khehar, J. (Oral).

The petitioner was convicted by the Special Judge, Ludhiana, and sentenced to imprisonment for one year and to pay a fine of Rs. 500/-, on 9.9.1997. Consequent upon the petitioner's conviction, he was dismissed from service by the Senior Superintendent of Police, Jagraon, on 3.10.1997. Criminal Appeal preferred by the petitioner against the order passed by the Special Judge, Ludhiana, was admitted by this Court on 8.10.1997 with the following interim order:-

> "During the pendency of the appeal, order of conviction and sentence shall remain under suspension."

In view of the suspension of the conviction order dated

9.9.1997, the petitioner represented to the respondents to recall the order by which he was dismissed from service. The petitioner first preferred an appeal before the Deputy Inspector General of Police, Ludhiana Range, Ludhiana, which was dismissed on 6.8.1998. He, then, preferred a revision petition, which was also rejected on 25.4.2000. Left with no other alternative, the petitioner preferred a mercy petition, which according to the pleadings in the written statement, is also stated to have been rejected on 19.4.2006. It is, therefore, that the petitioner approached this Court by filing the instant writ petition stating, that the very basis of passing the order dated 3.10.1997, whereby the petitioner was dismissed from service, stands obviated.

In response to the aforesaid contention of the learned counsel for the petitioner, learned counsel for the respondents vehemently contends, that the revision petition preferred by the petitioner was rejected on 25.4.2000, whereas, the instant writ petition has been filed by the petitioner after a lapse of about six years, in the year 2006. It is, therefore, the vehement contention of the learned counsel for the respondents, that the instant writ petition be dismissed for reasons of delay and laches alone.

It is not possible for us to accept the aforesaid contention of the learned counsel for the respondents, as it has been acknowledged in the written statement filed on behalf of the respondents, that the claim of the petitioner for reinstatement into service, after the passing of the order of dismissal dated 3.10.1997, was pending consideration at the hands of the respondents through a mercy petition, which had been filed by the petitioner, and that, the respondents took the final decision on the mercy petition only on 19.4.2006, whereupon, the petitioner approached this Court

without any further delay. In view of the above, we are satisfied, that the instant writ petition cannot be dismissed merely for reasons of delay and laches.

The second contention of the learned counsel for the respondents is, that the claim of the petitioner for recall of the order of dismissal dated 3.10.1997 cannot be adjudicated upon till the final determination of the appeal preferred by him in furtherance of the petitioner's conviction at the hands of the Special Judge, Ludhiana on 9.9.1997. In this behalf, learned counsel for the respondents has placed reliance on the decision rendered by the Apex Court in Deputy Director of Collegiate Education (Administration), Madras Vs. Nagoor Meera, AIR 1995 Supreme Court, 1364. Reliance has been placed on the following observations recorded therein:-

> "The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The, other course suggested, viz., to

> wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court."

It is not possible for us to accept the instant contention of the learned counsel for the respondents. Needless to mention, that the primary basis for passing the order of dismissal dated 3.10.1997 was, that the petitioner had been convicted by the Special Judge, Ludhiana on 9.9.1997. Had the petitioner not been convicted by the aforesaid order, there would have been no question of the Senior Superintendent of Police, Jagraon, passing the impugned order dated 3.10.1997. Consequent upon the filing of a criminal appeal at the hands of the petitioner against the order passed by the Special Judge, Ludhiana, an interim order was passed, details whereof, have been narrated in the foregoing paragraph, whereupon, the very basis on which the services of the petitioner were dispensed with by the Senior Superintendent of Police, Jagraon, vide order dated 3.10.1997, came to be obviated, inasmuch as, the conviction as well as, sentence awarded to the petitioner by the Special Judge, Ludhiana, came to be suspended with the order passed by this Court on 8.10.1997. The petitioner had to be reinstated into service as if, the order dated 9.9.1997 had never been passed by the Special Judge, Ludhiana. We are of the view, that the judgement of the Apex Court, relied upon by the learned counsel for the respondents, is inapplicable to the facts and circumstances of this case on account of the fact, that no such interim order had been passed in the aforesaid case. The aforesaid judgement cannot, therefore, be a precedent for the determination of the controversy in hand.

For the reasons recorded hereinabove, the order of dismissal passed against the petitioner dated 3.10.1997, is hereby set aside. The respondents are directed to reinstate the petitioner forthwith.

Disposed of accordingly.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

05.03.2007
sk.

The petitioner was convicted by the Special Judge, Ludhiana, and sentenced to imprisonment for one year and to pay a fine of Rs. 500/- on 09.09.1997. Consequent upon the petitioner's conviction, he was dismissed from service by the Senior Superintendent of Police, Jagraon, on 03.10.1997. Criminal Appeal preferred by the petitioner against the order passed by the Special Judge, Ludhiana, was admitted by this Court on 08.10.1997 with the following interim order:-

> "During the pendency of the appeal, order of conviction and sentence shall remain under suspension."

In view of the suspension of the conviction order dated 09.09.1997, the petitioner represented to the respondents to recall the order by which he was dismissed from service. The petitioner first preferred an appeal before the Deputy Inspector General of Police, Ludhiana Range, Ludhiana, which was dismissed on 06.08.1998. He, then, preferred a revision petition, which was also rejected on 25.04.2000. Left with no other alternative, the petitioner preferred a mercy petition, which according to the pleadings in the written statement, is also stated to have been rejected.